Tropiland Sdn Bhd v Majlis Perbandaran Pulau Pinang

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P-02-691 OF 1995
NH CHAN, ABDUL MALEK AHMAD AND AHMAD FAIRUZ JJCA
12 NOVEMBER 1997

Local Government *— Rates — Arrears of assessment — Rates assessed in 1990 but backdated to 1986 — Retrospective rating — Arrears by appellant — Whether retrospective rating valid — Whether valuation list can be amended after its expiry*

The appellant was the owner of a multi-storeyed car park in Penang. They had received a notice dated 1 June 1990 purporting to assess the rate for the car park backdated to 2 April 1986, on which date the appellant occupied the premises. The respondent filed an originating summons dated 9 June 1993 for an order that the premises of the car park be attached and sold under s 151 of the Local Government Act 1976 ('the Act') to pay off arrears by the appellant. The originating summons was dismissed by the senior assistant registrar on 12 April 1994 and the appeal was filed on the next day to the judge in chambers. The High Court judge allowed the appeal.

Although the premises had been occupied since April 1986, the respondent never assessed the rates until 1 June 1990. By letter dated 12 June 1990, the appellant objected on the grounds that they only commenced operations of the car park in November 1986 after getting the partial certificate of fitness for occupation on 18 October 1986 to use only two floors of the car park with 120 bays. The assessment appeal committee heard the objection and wrote a letter to notify the appellant of the assessed rates which had been approved by the respondent. The letter also stated that whoever is dissatisfied with the decision of the respondent may file an appeal to the High Court by way of originating motion within 14 days from the date of receipt of the letter. The appellant did not file any appeal but at the same time they did not make any payment. This resulted in the originating summons filed on 9 June 1993. In the High Court, the appellant had raised the point of the validity of retrospective rating as the assessment was in 1990 but it involved two valuation lists, the first commencing in 1982 and the second commencing in 1987. One of the questions posed in this appeal is whether an amendment to a valuation list can take place after the expiry of the five-year term of the valuation list.

Held, allowing the appeal on the 1982 valuation list but dismissing the appeal on the 1987 valuation list:

The respondent's counsel's argument that the valuation list did not expire but continued to remain in force was devoid of merit. 'To supersede' would mean 'to take the place of' and therefore, the

valuation list would have expired. Section 154 of the Act was not applicable as the appellant was not making an application but was only objecting by way of argument to the respondent's application under s 151 of the Act for the attachment and sale of the holding. The appellant was also not appealing under s 145(1) of the Act but against the High Court order reversing the senior assistant registrar's order refusing to order the attachment and sale under s 151(1) of the Act.

Section 137(2) of the Act states that the valuation list together with the amendments made under s 144 of the Act shall remain in force until it is superseded by a new valuation list. Therefore, when a valuation list is amended under sub-s (1) of s 144 of the Act, it must be the valuation list that is in force and not a superseded one. An amendment cannot be made by the respondent to an outdated valuation list (see pp 76H–I, 77C–D, H, 78E–F and 79A); *Cathay Finance Co Ltd v Municipal Councillors of Georgetown, Penang* (1957) 3 MC 105 and *Rodwell v Gwynne Trusts Ltd* [1970] 1 All ER 314 distinguished.

[Bahasa Malaysia summary

Perayu merupakan pemilik medan letak kereta bertingkat-tingkat di Pulau Pinang. Mereka telah menerima suatu notis bertarikh 1 Jun 1990 yang kononnya menaksir kadar untuk medan letak kereta yang diundurkan tarikh kepada 2 April 1986, pada mana perayu menduduki premis tersebut. Penentang memfailkan suatu saman pemula bertarikh 9 Jun 1993 untuk satu perintah bahawa premis medan letak kereta ditahan dan dijual di bawah s 151 Akta Kerajaan Tempatan 1976 ('Akta tersebut') untuk membayar tunggakan oleh perayu. Saman pemula ditolak oleh penolong kanan pendaftar pada 12 April 1994 dan rayuan difailkan pada hari yang berikut kepada hakim dalam kamar. Hakim Mahkamah Tinggi membenarkan rayuan.

Walaupun premis telah diduduki sejak April 1986, penentang tidak menaksir kadar-kadar sehingga 1 Jun 1990. Melalui surat bertarikh 12 Jun 1990, perayu membantah atas alasan bahawa mereka hanya memulakan operasi medan letak kereta pada bulan November 1986 selepas mendapatkan sebahagian perakuan kelayakan untuk penghunian pada 18 Oktober 1986 untuk menggunakan hanya dua tingkat medan letak kereta dengan 120 ruang. Jawatankuasa rayuan penaksiran telah mendengar bantahan itu dan menulis sepucuk surat yang memaklumkan kepada perayu tentang kadar ditaksir yang telah diluluskan oleh penentang. Surat itu juga menyatakan bahawa sesiapa yang tidak puas hati dengan keputusan penetang boleh memfailkan suatu rayuan keapda Mahkamah Tinggi menerusi usul pemula dalam tempoh 14 hari dari tarikh penerimaan surat itu. Perayu tidak memfailkan apa-apa rayuan tetapi pada masa yang sama mereka tidak membuat sebarang bayaran. Ini menyebabkan saman pemula difailkan pada 9 Jun 1993. Di Mahkamah Tinggi, perayu telah membangkitkan kesahan pengkadaran kebelakangan kerana

penaksiran adalah pada tahun 1990 tetapi ia melibatkan dua senarai penilaian, yang pertama bermula pada tahun 1982 dan yang kedua bermula pada in 1987. Salah satu soalan yang dikemukakan dalam rayuan ini adalah sama ada pindaan kepada senarai penilaian boleh berlaku selepas tamatnya tempoh lima tahun senarai penilaian.

Diputuskan, membenarkan rayuan atas senarai penilaian tahun 1982 tetapi menolak rayuan atas senarai penilaian tahun 1987:

Hujah peguam penentang bahawa senarai penilaian tidak tamat tempohnya tetapi terus kekal berkuatkuasa adalah tanpa merit. 'Untuk mengganti' bermakna 'untuk mengambil tempat' dan maka, senarai penilaian sudah tamat tempohnya. Seksyen 154 Akta tersebut tidak terpakai kerana pemohon bukannya membuat permohonan tetapi hanya membantah menerusi penghujahan terhadap permohonan penentang di bawah s 151 Akta tersebut untuk penahanan dan jualan pemegangan itu. Perayu juga tidak merayu di bawah s 145(1) Akta tersebut tetapi terhadap perintah Mahkamah Tinggi yang mengakas perintah penolong kanan pendaftar yang enggan memerintahkan penahanan dan jualan di bawah s 151(1) Akta tersebut.

Seksyen 137(2) Akta tersebut menyatakan bahawa senarai penilaian bersama dengan pindaan yang dibuat di bawah s 144 Akta tersebut hendaklah kekal berkuatkuasa sehingga ia digantikan oleh senarai penilaian yang baru. Oleh itu, apabila suatu senarai penilaian dipinda di bawah s 144(1) Akta tersebut, ia mestilah merupakan senarai penilaian yang berkuatkuasa dan bukannya yang diganti. Pindaan tidak boleh dibuat oleh penentang kepada senarai penilaian yang telah tamat tempohnya (lihat ms 76H–I, 77C–D, H, 78E–F dan 79A); *Cathay Finance Co Ltd v Municipal Councillors of Georgetown, Penang* (1957) 3 MC 105 dan *Rodwell v Gwynne Trusts Ltd* [1970] 1 All ER 314 dibeza.]

Notes

For a case on arrears of assessment, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) para 131.

Cases referred to

Cathay Finance Co Ltd v Municipal Councillors of Georgetown, Penang (1957) 3 MC 105 (distd)

Majlis Perbandaran Pulau Pinang v Eng Wan (M) Sdn Bhd Penang High Court Originating Summons 24–334–1994 (refd)

Penang Yellow Bus Co v Rural District Council [1961] MLJ 291 (distd)

Rodwell v Gwynne Trusts Ltd [1970] 1 All ER 314 (distd)

Semantan Estate (1952) Ltd v Collector of Land Revenue [1960] MLJ 300 (distd)

Yee Seng Rubber Co Sdn Bhd v The Commissioner of the Federal Capital of Kuala Lumpur [1972] 2 MLJ 21 (distd)

Legislation referred to

Land Acquisition Enactment s 22
Local Government Act 1976 ss 137, 142, 144, 145, 148, 151, 154
Municipal Ordinance s 68(3)
Rent Act 1965 s 17 [UK]
Town Boards Enactment s 44(1)

Appeal from: Originating Summons No 24–477 of 1993 (High Court, Pulau Pinang)

Lakhbir Singh Chahl (*Jagjeet Kaur* with him) (*Lakhbir Singh Chahl & Co*) for the appellant.

Cyrus Das (*Gerald Samuel* with him) (*Presgrave & Matthews*) for the respondent.

Abdul Malek Ahmad JCA (delivering judgment of the court): The originating summons filed by the plaintiff, the respondent before us, dated 9 June 1993 is for an order that the premises at No 1 Lebuh Tek Soon, 10000 Penang, be attached and sold under s 151 of the Local Government Act 1976 ('the Act') to pay off the arrears amounting to RM629,741.95 together with the interest at 6% per annum from the notice dated 27 April 1993 until realization.

Consequential applications were for an order that the date fixed for the sale should not be less than one month from the date of the order applied for, that the reserve price and other directions as regards the sale are to be fixed by the senior assistant registrar of the High Court in Penang, that there must be vacant possession of the premises within seven days of the sale, for other directions the senior assistant registrar deems fit and appropriate, for costs to be taxed and for the relevant authorities to register the name of the purchaser of the premises.

The appellant, the defendant in the court below, is the owner of the multi-storeyed car park on the premises. They had received a notice dated 1 June 1990 purporting to assess the rate for the car park backdated to 2 April 1986, on which date the appellant occupied the premises. Although the car park commenced operations in April 1986, the certificate of fitness was issued only in October 1986.

The supporting affidavit of the respondent for the originating summons states that the arrears of RM629,741.94 is made up of the following:

Arrears as at 9 April 1992	RM460,734.44
Miscellaneous debts as at 9 April 1992	RM49,016.50
Assessment for second half of 1992	RM49,016.50
Payment on notice imposed on 1 September 1992	RM980.00

Payment on warrant imposed on 10 October 1992	RM9,999.00	RM569,746.44
Assessment for first half of 1993	RM49,016.50	
Payment on notice imposed on 1 March 1993	RM980.00	
Payment on warrant imposed on 8 April 1993	RM9,999.00	RM59,995.50
		RM629,741.94

The originating summons was dismissed by the learned senior assistant registrar on 12 April 1994 and the appeal was filed on the next day to the judge in chambers. The learned High Court judge allowed the appeal and granted the order in terms on 18 October 1995.

After hearing the parties on 2 September 1997, we were not happy with the issue of the validity of one of the two valuation lists referred to especially when the learned High Court judge had brushed aside this point in the appeal before him. We requested both learned counsels to file in further written submissions before the next hearing on 12 November 1997.

Although the premises had been occupied since April 1986, the respondent never assessed the rates until 1 June 1990 when their valuation department issued the notice with the heading 'Proposed changes to the valuation lists' where it is stated that they were proposing the changes to the 1986 to 1990 valuation list with effect from 12 July 1990, on the grounds that the rates for the premises had never been rated before, at 25% for 1986 and 11½% for 1987 to 1990.

By letter dated 12 June 1990, the appellant made their objection on the grounds that they only commenced operations of the car park in November 1986 after getting the partial certificate of fitness for occupation on 18 October 1986 to use only two floors of the car park with 120 bays. With only 20% of it being used, they had suffered great losses.

The full certificate of fitness for occupation was only obtained on 28 April 1987. For the years 1986 to 1988, economic recession had set in, resulting in further losses. With only 25% of the car park being occupied, they had accordingly appealed for a reduction.

All these facts were disputed by the valuation department of the respondent in their reply dated 11 September 1990 when they gave the appellant two weeks to state in writing whether they wanted their objection to be heard by the assessment appeal committee, failing which the rates as proposed by them in their earlier notice would be approved by the respondent.

By letter dated 20 September 1990, the appellant stated that they wanted their objection to be heard by the assessment appeal committee. The said committee met on 26 August 1991 to hear the objection but the letter dated 8 October 1991 they wrote to the appellant to say that they had decided that the rates should be RM87,300 for the period commencing on 2 April 1986 to 31 October 1996, RM362,800 for the period commencing on 1 November 1986 to 31 December 1986, RM629,900 for the period commencing on 1 January 1987 to 27 April 1987 and RM754,100 from 28 April 1987, which rates had been approved by the respondent on 26 September 1991.

The last paragraph of that letter also states that whoever is dissatisfied with the decision of the respondent may file an appeal to the High Court by way of originating motion within 14 days from the date of receipt of the letter but all rates due must be paid at the time of appeal, by virtue of s 145 of the Act.

The appellant did not file any appeal but at the same time they did not make any payment. This resulted in the originating summons filed on 9 June 1993.

Before the learned High Court judge, the appellant had raised the point of the validity of retrospective rating. The assessment was in 1990 but involved two valuation lists, the first commencing on 1 January 1982 to 31 December 1986 and the second commencing on 1 January 1987 to 31 December 1991.

The quick reply from learned counsel for the respondent was that the appellant was estopped from raising this issue as it had been decided by the assessment appeal committee and the appellant did not appeal against that decision. They could have appealed to the High Court after paying the rates. The learned High Court judge was of the view that the appellant was taking the easy course by not appealing to the High Court then but raising the point now without having to pay the rates first. This, he added, was a mockery of the proviso to sub-s (1) of s 145 of the Act. As such, he refused to consider the point.

The respondent also insisted before the learned High Court judge that the appellant cannot oppose the originating motion in these circumstances because when the Form H notice was pasted on the premises, the attachment had already taken place. In the event, the appellant could only make use of s 154 of the Act to stay proceedings. Section 154 of the Act reads:

> (1) If any person whose property has been attached under the provisions of this Part disputes the propriety of the attachment he may apply to the High Court, in the case of the attachment of a holding, or the Magistrate's Court in the case of the attachment of movable property, for an order to stay the proceedings, and such Court after making such enquiry as may be necessary shall make such order on the premises as may be just.
>
> (2) No application shall be entertained by any Court unless the applicant has deposited with the local authority the amount of the arrear with the interest and costs.

Incidentally, the same High Court judge had already decided in *Majlis Perbandaran Pulau Pinang v Eng Wan (M) Sdn Bhd* (Penang High Court Originating Summons 24–334–1994) that an attachment cannot be effective by the mere pasting of Form H on the relevant premises. An order from the senior assistant registrar, he rules, was necessary.

To say that the appellant cannot oppose the originating summons, he continued, was ridiculous in view of the endorsement at the end of the originating summons saying that they could do so. However, the learned High Court judge said they could only do so on procedure, namely that Form H was not in order, was not pasted in the way directed by s 148 of the Act or as regards the defect in the service of the originating summons. Since there was no such procedural objections, the learned senior assistant registrar should have granted the relevant orders. He had consequently allowed the appeal and had made the orders applied for.

Section 144 of the Act provides for the circumstances when a valuation list may be amended and s 142 of that Act details the procedures where an aggrieved person may make objections. Section 145 of the Act states:

> (1) Any person who having made an objection in the manner described by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:
>
> Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.
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> (2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of the receipt thereof.
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> (3) The local authority shall be the respondent in any appeal under this section.
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> (4) Every such appeal shall be heard before the High Court whose decision on questions of fact shall be final and conclusive.
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> (5) From the decision of the High Court either party may appeal on questions of law to the Federal Court whose decision shall be final and conclusive.
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> (6) In any appeal under subsection (5), the provisions of any written law for the time being in force relating to appeals in civil matters from the High Court in its appellate jurisdiction to the Federal Court shall apply.

One of the questions posed in this appeal by this court, which had resulted in the adjournment, is whether an amendment to a valuation list can take place after the expiry of the five-year term of the valuation list in question. Learned counsel for the respondent argued that the valuation list does not expire but it is only superseded by the subsequent valuation list but continues to 'remain in force'. We find this argument totally devoid of merit as taken in its ordinary sense, 'to supersede' would mean 'to take the place of'.

Subsections (2) and (3) of s 137 of the Act, formerly sub-ss (3) and (4) as the original sub-s (2) had been deleted by A4361 with effect from 3 March 1978, are relevant in this respect and they state as follows:

A (2) The Valuation List together with the amendments made under section 144 shall remain in force until it is superseded by a new Valuation List.

(3) A new Valuation List which shall contain the same particulars as in subsection (1) shall be prepared and completed once every five years or within such extended period as the State Authority may determine.

B Section 154 of the Act, which the learned High Court judge had referred to, is where an objection is made where the person whose holding is attached disputes the propriety of the attachment and applies to the High Court to stay the proceedings. Subsection (2) thereof clarifies that no application shall be entertained unless the amount of the arrears with interest and costs had been deposited by the applicant.

C But as the learned High Court judge had stated, this section is not applicable as the appellant is not making an application but is only objecting by way of argument to the respondent's application under s 151 of the Act for the attachment and sale of the holding.

D Learned counsel for the respondent had also submitted that in line with s 144 of the Act, the valuation list may be amended at any time. It is also not disputed that the valuation list for 1982 to 1986 was published on 22 October 1981 and the valuation list for 1987 to 1991 was published on 23 October 1986. The contention of the respondent was that they could not rate the holding earlier as it was not rateable on 22 October 1981.

E Learned counsel had reiterated that this ground was not raised earlier by the appellant and that the appeal was fatal following the proviso to sub-s (1) of s 145 of the Act. In support, he referred to *Semantan Estate (1952) Ltd v Collector of Land Revenue* [1960] MLJ 300 where the court held that the condition in the section governing the reference to the court, namely s 22 of the Land Acquisition Enactment, must be complied with before the Collector F can make the reference and the court has jurisdiction to act on it, to *Penang Yellow Bus Co v Rural District Council* [1961] MLJ 291 where the court ruled that an appeal is not properly before the court by reason of the non-compliance with the provisions of s 68(3) of the Municipal Ordinance at the time the notice of appeal was lodged, and to *Yee Seng Rubber Co Sdn Bhd v* G *The Commissioner of the Federal Capital of Kuala Lumpur* [1972] 2 MLJ 21 where the court said that since s 44(1) of the Town Boards Enactment required the rates due to be paid when the notice of appeal was filed, the appeal had to be dismissed as that was a mandatory provision which goes to the jurisdiction of the court; it was not directory and cannot be waived.

H We, however, felt that this appeal is on a different footing as the appellant is not appealing under sub-s (1) of s 145 of the Act but against the High Court order reversing the senior assistant registrar's order refusing to order the attachment and sale under sub-s (1) of s 151 of the Act after the respondent had acted under s 148 of the Act.

I We also need to distinguish two of the authorities cited. In the case of *Cathay Finance Co Ltd v Municipal Councillors of Georgetown, Penang* (1957) 3 MC 105, the court held the amendment to the assessment rates can validly be of retrospective effect. The relevant excerpt of the speech of Rigby J states:

> Again, I am of the opinion that such amendment can validly be of retrospective effect. As Mr Meek, for the respondents, pointed out, the whole tenor of the section is to enable the commissioners to counteract the 'mistake, oversight or fraud' in the list. It would seem illogical, therefore, if that amendment to vitiate, for example, the fraud could not be made to refer back to the date the fraud was perpetrated.

In the House of Lords case of *Rodwell v Gwynne Trusts Ltd* [1970] 1 All ER 314, it was held that the tenant was not entitled to the protection of the Rent Act 1965 (as reenacted in the Rent Act 1968) because for such protection to apply, there had to be an alteration of the rateable value in the valuation having effect back to the 'material date' and as an application for a refund under s 17 could be made within six years after the rates were paid, a dwelling house long unprotected might suddenly become protected with ensuing complications if it could bring the house within the Act, and such consequences could not have been intended by Parliament.

In the first case, no reference is made to an expired valuation list which is the problem in this appeal. We would add that we agree that there can be retrospective rating provided it affects a current valuation list. In the second case, it was an application by the rate payer himself to alter the valuation list to get protection of the Rent Act 1965 and the facts there are quite different.

Learned counsel for the appellant, quite rightly we might add, referred to sub-s (2) of s 137 of the Act which states that the valuation list together with the amendments made under s 144 of the Act shall remain in force until it is superseded by a new valuation list. He maintained that once superseded, the previous valuation list is no longer in force. Therefore, when a valuation list is amended under sub-s (1) of s 144 of the Act, it must certainly be the valuation list that is in force and not a superseded one.

This is reinforced by sub-s (4) of s 144 of the Act which says that any amendment made under this section may, at the discretion of the local authority, have regard to the level of annual values or improved value prevailing as at or about the time the current valuation list was prepared. The amendment, therefore, must be to the current valuation list. Also, sub-s (6) of s 144 of the Act states that where on account of any amendment in the valuation list the rate payable in respect of any holding is enhanced, reduced or extinguished, the new rate shall be payable, or the rate shall cease to be payable, from the commencement of the next half year or such earlier date as the local authority may determine.

Finally, learned counsel for the appellant referred to the notice dated 1 June 1990 wherein it is stated that the proposal was to amend the valuation list for the years 1986 to 1990. He stressed that there was no such valuation list as the relevant valuation lists were for 1982 to 1986 and for 1987 to 1991. Of course, learned counsel for the respondent promptly said that this had been made clear by the details in the bottom right box in the notice and in para 7 thereof where the two valuation lists have been stated separately as to the relevant amounts.

A Having considered the arguments, authorities and affidavits, we were in total agreement with learned counsel for the appellant that an amendment cannot be made by the respondent to an outdated valuation list. Accordingly, we allowed the appeal as regards the 1982 valuation list with no order as to costs and dismissed the appeal as regards the 1987 valuation list with half costs only. The deposit is to go to the respondent to account of their B taxed costs.

Appeal on 1982 valuation list allowed. Appeal on 1987 valuation list dismissed.

Reported by David Lai

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